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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,866	01/22/2004	Kevin J. Turpin	4001-0121	5921
81877 7590 06/05/2009 ADVANTEDGE LAW GROUP, LLC 922 W. Baxter Dr. Suite 100 South Jordan, UT 84095				
EXAMINER				
TIMBLIN, ROBERT M				
ART UNIT		PAPER NUMBER		
2167				
MAIL DATE		DELIVERY MODE		
06/05/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/762,866	<b>Applicant(s)</b> TURPIN ET AL.
<b>Examiner</b> ROBERT TIMBLIN	<b>Art Unit</b> 2167

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_ (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/John R. Cottingham/  
Supervisory Patent Examiner, Art Unit 2167

/ROBERT TIMBLIN/  
Examiner, Art Unit 2167

Examiner removes the previous claim objections due to Applicant's arguments (p. 14-15 of the after final reply dated 5/30/2009).

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant argues (pages 15-17) that Jenevein fails to disclose protecting an "in-partition image" (e.g. page 15). Applicant goes on further (page 16) to argue that because Jenevein states on a number of occasions that its "in-partition images" may be accidentally deleted or overwritten by users that such images are not protected "from accidental user deletion or modification. Examiner disagrees and submits that Jenevein provides instances of where its "in-partition" images may be accidentally deleted to merely support how their invention protects against such accidents. In other words, Jenevein provides scenarios in which their invention is beneficial to overcome.

As Examiner provided in the Final Office Action (i.e. of 3/30/2009) Jenevein at least teaches protection of "in-partition" images by associating attributes such as hidden or read-only so it is not easily accessible to the end-user (Jenevein, col. 15 line 8-10). Since Jenevein applies this technique to system data within the imaged partition (col. 15, lines 3-5), Jenevein is thus seen to teach protecting an "in-partition image" as needed by the claim. Further yet, Examiner submits that Jenevein teaches the argued protection limitation in col. 20, lines 10-12 (Examiner notes the Final Office Action, page 5 inadvertently states "col. 2 lines 10-12" - Examiner apologizes for the typographical error). Therein Jenevein explicitly states, again using hidden and read-only attributes, that "This helps prevent image files and image containers from accidentally being modified by the user". As such, Examiner submits that Jenevein provides the protection as claimed.

Moreover, even if Applicant's arguments were persuasive (which is not conceded), Examiner submits that the combination of Jenevein and Leech teach the protection of such data necessitated by the claim. Specifically, Leech provides a filter driver to protect data which is needed by Jenevein (e.g. col. 14 line 65 to col. 15 line 2 and col. 15 lines 7-10 and col. 20 line 10-12) in order to protect (or even further protect) in-partition images from accidental user deletion or modification.

As Applicant's arguments are found unpersuasive, Examiner maintains the finality status of the present application.